(1) SINGLE BENCH (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 5860 2005

PETITIONER

pawan Kumar Sahu S/o Shri Gangadeen Sahu, aged about 40 years, Resident of Village-Chorbhatti, Tahsil-Kurud, District Dhamatari (C.G.)

VERSUS

RESPONDENTS

1. Lokeshwar Sahu S/o Shri Ram dayal Sahu,
2. Ashwani Sahu S/o Shri Shobha Ram Sahu,
3. Ghanshyam Sahu S/o Shri Ramcharan Sahu,
   The petitioner No. 1 to 3 resident of Village-Chorbhatti, tahsil-Kurud, district-Dhamatari (C.G.)
4. ~~T.R. Pahare~~ (tahsildar Kurud) Returning officer (Panchyat) tahsil-Kurud Dist. Dhamatari (C.G.)
5. S.K.Rathor S/o Shri Lakbeer Singh Rathore, aged about 39 years, (Presiding officer Gram-panchayt Chorbhatti) R/o Govt. College Dhamatari Dist. Dhamatari (C.G.)
6. C. L. Mishra S/o shri Rajaram Mishra, aged about 52 years, (presiding officer Gram-panchyat Chorbhatti), R/o Aurvedik Chitshalay, Kodegaon B, Dist. Dhamatari (C.G.)

Attested 21/12/05 A.R.(J) 5996/05 Copy received P.S. Rajput 21/11/05 dated Is Name Copy Lab

WRIT PETITION UNDER ARTICLE 226/227 OF THE COUNSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CEERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERES:

(1) SINGLE BENCH (3)

IN

PET

RE

Attested
By &
A.R.-I

Rec'd M.W.S. from
Mr. Jat and counsel
on Pwr Counsel order
dt. 20.12.05.
Rec'd
21.12.05.

APPELLANT NO.1. The State of Chhattisgarh
Through Secretary
Panchyat & Social Welfare
Department, P.H.Q. Nawa
Raipur (C.G.)

APPELLANT NO.2. The Sub-Divisional
Officer cum presiding
Officer (S) Mahasi
Distt. Mahasi (C.G.)

COMM
21/1

(58)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.S.860/05 (O.M.) **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10.11.2006:

Shri R.S. Patel counsel for the petitioner.
Shri P.P. Sahu counsel for the respondent.

The petitioner by the instant petition under Articles 226/227 of the Constitution of India has challenged the order dated 13.10.2005 passed by the Specified Officer – respondent No.8 under section 122 of the Chhattisgarh Panchayat Raj Adhiniyam 1993 dismissing the election petition of the petitioner.

Numerous grounds have been urged by the petitioner to assail the above order including one that the respondent No.1 was declared Sarpanch by lot as both the contestants had secured equal number of votes and this procedure was adopted in the absence of the petitioner and the invalid votes were counted in the category of the valid votes in favour of respondent No.1.

Learned counsel for the petitioner submits that the instant petition is squarely covered by order dated 17.4.2006 passed in W.P. No. 3310/2006 where in the identical situation the petition preferred by the election petitioner was allowed solely on the ground that the election tribunal before entering into the merits of the dispute raised in the election petition failed to frame issues. He submits that in the instant case also the election tribunal has decided the election petition preferred by the petitioner without framing the issues on the basis of pleadings of respective parties and thereby denied him the reasonable opportunity of leading evidence on the disputed issues.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..W.P...5860/05 (C.M) **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand learned counsel for the respondent submits that though it is true that formal issues have not been framed by the election tribunal but the petitioner was well aware of the issues involved in the election petition and ample opportunity was given to the petitioner to lead evidence to substantiate the grounds raised by him in the election petition and only after considering the evidence available on record by the impugned order the election petition of the petition was dismissed and therefore no prejudice was caused to the petitioner in the instant case.

I have heard counsel for the parties.

Rule 11 of THE CHHATTISGARH PANCHAYATS (ELECTION PETITIONS, CORRUPT PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP) RULES, 1995 provides as under:

(1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.

In view of above, the specified officer – respondent No.8 ought to have framed issues arising out of the pleadings of the parties and called upon the parties to lead evidence against the issues framed.

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.5860/05 (O.M.) **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Thus on this ground alone the writ petition deserves to be allowed and the impugned order is liable to be set aside. Accordingly, the petition is allowed and the impugned order is set aside. Matter is remanded back to the specified officer – respondent No.8 with a direction to dispose of the same in accordance with law and in the light of this order, as expeditiously as possible, at any rate within a period of three months from the date of receipt of copy of this order. It is made clear that there is no order on the merits of the instant election petition and it is open to the specified officer to decide this petition on its own merits. Sd/- Dhirendra Mishra Judge	

P.T.O.

16.11.06 24.11.06